

A 10954 Schimminger Same as [S 8472](#)
MARCELLINO
Environmental Conservation Law
TITLE....Relates to the "Brownfield cleanup
program" and to the brownfield redevelopment
tax credit
05/29/18referred to environmental conservation

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Schimminger
ON FILE: 05/09/18 Environmental Conservation
Law
TITLE....Relates to the "Brownfield cleanup
program" and to the brownfield redevelopment tax
credit
05/08/18 REFERRED TO ENVIRONMENTAL
CONSERVATION

SCHIMMINGER

Amd §§27-1405, 27-1409, 27-1411, 27-1415 & 27-1419, En Con L; amd §21, Tax L
Relates to the "Brownfield cleanup program" exceedances of the track 1 soil cleanup objectives, to
clarifying the operative documents that describe the approved remedial action for a brownfield site,
and to incorporating provisions related to soil vapor intrusion; and relates to the brownfield
redevelopment tax credit.

STATE OF NEW YORK

10954

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. SCHIMMINGER -- read once and referred to the
Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the
"Brownfield cleanup program" exceedances of the track 1 soil cleanup
objectives, to clarifying the operative documents that describe the
approved remedial action for a brownfield site, and to incorporating
provisions related to soil vapor intrusion; and to amend the tax law,
in relation to the brownfield redevelopment tax credit

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

- 1 Section 1. Section 27-1405 of the environmental conservation law is
2 amended by adding two new subdivisions 32 and 33 to read as follows:
- 3 32. "Remedial work plan" or "remedial action work plan" shall mean a
4 document that describes all components of a remedial action plan
5 selected by the volunteer or participant and approved by the department
6 in consultation with the department of health.
- 7 33. "Remedial action cover systems" shall mean engineering controls
8 comprised of physical barriers employed to actively or passively
9 contain, stabilize, or monitor contamination, restrict the movement of
10 contamination to ensure the long-term effectiveness of the remedial
11 program, or eliminate exposure pathways to contamination, and may
12 include:
- 13 (a) soil cover systems in landscaped or exposed soil areas, which
14 must:
- 15 (i) be comprised of soil or other unregulated material as set forth in
16 6 NYCRR Part 375 and otherwise complies with applicable regulations; and
17 (ii) not exceed the applicable soil cleanup objectives for use of the
18 site pursuant to applicable regulations; or
- 19 (b) hardscape cover systems defined as physical layer of solid imper-
20 vious material such as concrete, asphalt, or other hard surfaces, on the
21 exterior, such as sidewalks or asphalt or interior, such as foundation
22 slabs or sidewalls of a building, which is designed to serve a remedial
23 purpose notwithstanding that the hardscape cover system may also serve
24 another purpose for building construction or end use of the site.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 § 2. Section 27-1409 of the environmental conservation law is amended
2 by adding a new subdivision 9-a to read as follows:

3 9-a. One stating that the remedial party or parties executing the
4 agreement shall receive the applicable tax credits provided in section
5 twenty-one of the tax law, as added by section one of part H of chapter
6 one of the laws of two thousand three, and section twenty-two of the tax
7 law, subsequent to receipt of a certificate of completion pursuant to
8 section 27-1419 of this article;

9 § 3. Section 27-1411 of the environmental conservation law is amended
10 by adding a new subdivision 7 to read as follows:

11 7. The department may, at its option, prepare a decision document to
12 summarize the major components of the selected and approved remedy
13 described in the remedial work plan or the remedial action work plan to
14 assist the public in understanding the remedy; provided however, that
15 such decision document shall not supersede the requirements for the
16 remedy under the remedial work plan or the remedial action work plan and
17 shall not represent a complete or final description of the remedy.

18 § 4. Subdivision 4 of section 27-1415 of the environmental conserva-
19 tion law, as amended by section 7 of part A of chapter 577 of the laws
20 of 2004, is amended to read as follows:

21 4. Tracks. The commissioner, in consultation with the commissioner of
22 health, shall propose within twelve months and thereafter timely promul-
23 gate regulations which create a multi-track approach for the remediation
24 of contamination, and, commencing on the effective date of such regu-
25 lations, utilize such multi-track approach. Such regulations shall
26 provide that groundwater use in Tracks 2, 3 or 4 can be either
27 restricted or unrestricted. The tracks shall be as follows:

28 (a) Track 1: The remedial program shall achieve a soil cleanup level
29 that will allow the site to be used for any purpose without restriction
30 and without reliance on the long-term employment of institutional or
31 engineering controls~~[, and shall]~~ to achieve the contaminant-specific
32 remedial action objectives for soil which conform with those contained
33 in the generic table of contaminant-specific remedial action objectives
34 for unrestricted use developed pursuant to subdivision six of this
35 section. Provided, however, that volunteers whose proposed remedial
36 program for the remediation of groundwater or soil vapor may require the
37 long-term employment of institutional or engineering controls after the
38 bulk reduction of groundwater contamination to asymptotic levels has
39 been achieved or, if residual soil vapor remains present from an on-site
40 or off-site soil vapor source, but whose soil cleanup program would
41 otherwise conform with the soil remediation requirements necessary to
42 qualify for Track 1, shall qualify for Track 1. In the event the soil
43 vapor source entirely emanates from an off-site source onto the Track 1
44 remediated site, the long-term employment of institutional or engineer-
45 ing controls can remain part of the approved long-term remedy while
46 still maintaining the site's Track 1 status, provided: (i) the Track 1
47 remediated site's owner shall be responsible for maintenance of the soil
48 vapor mitigation remedy, whether in the form of a vapor barrier system
49 or a passive or active sub slab depressurization treatment system,
50 either ex-situ or in-situ; and (ii) the Track 1 remediated site remains
51 in compliance with the terms in an environmental easement created and
52 recorded pursuant to title thirty-six of article seventy-one of this
53 chapter. In the event the planned land use of the site includes any
54 residential use, and the projected remediation plan is to achieve the
55 Track 1 soil cleanup objectives pursuant to this subdivision, exceedanc-

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1 es of the Track 1 soil cleanup objectives can be used to determine
2 Brownfield site eligibility.

3 (b) Track 2: The remedial program may include restrictions on the use
4 of the site or reliance on the long-term employment of engineering
5 and/or institutional controls to address residual contaminated soil
6 above bedrock still present above the Track 1 soil cleanup objectives,
7 or to address contaminated groundwater or soil vapor, but shall achieve
8 the contaminant-specific remedial action objectives for soil which
9 conform with those contained in one of the generic tables developed
10 pursuant to subdivision six of this section without the use of institu-
11 tional or engineering controls to reach such soil cleanup objectives.
12 The requirement to achieve contaminant-specific soil cleanup objectives
13 is for all soils above bedrock.

14 (c) Track 3: The remedial program shall achieve contaminant-specific
15 remedial action objectives for soil which conform with the criteria used
16 to develop the generic tables for such objectives developed pursuant to
17 subdivision six of this section but may use site specific data to deter-
18 mine such objectives.

19 (d) Track 4: The remedial program shall achieve a cleanup level that
20 will be protective for the site's current, intended or reasonably antic-
21 ipated residential, commercial, or industrial use with restrictions and
22 with reliance on the long-term employment of institutional or engineer-
23 ing controls to achieve such level. The regulations shall include a
24 provision requiring that a cleanup level which poses a risk in excee-
25 dance of an excess cancer risk of one in one million for carcinogenic
26 end points and a hazard index of one for non-cancer end points for a
27 specific contaminant at a specific site may be approved by the depart-
28 ment without requiring the use of institutional or engineering controls
29 to eliminate exposure only upon a site specific finding by the commis-
30 sioner, in consultation with the commissioner of health, that such level
31 shall be protective of public health and environment. Such finding shall
32 be included in the draft remedial work plan for the site and fully
33 described in the notice and fact sheet provided for such work plan.

34 § 5. Section 27-1415 of the environmental conservation law is amended
35 by adding a new subdivision 5-b to read as follows:

36 5-b. (a) Remedial action cover systems shall be included in the reme-
37 dial action for:

38 (i) a Track 3 or 4 site if residual soil exceeds any applicable soil
39 cleanup objectives; or

40 (ii) a Track 1, 2, 3 or 4 remedial action site if the remedial action
41 cover system is required for monitoring or to prevent exposure to resi-
42 dual contaminated groundwater; or

43 (iii) a Track 1, 2, 3 or 4 remedial action site if soil vapor miti-
44 gation is required due to an exceedance of an applicable soil vapor
45 level, and therefore, soil vapor mitigation methodologies such as a
46 vapor barrier or a passive or active sub slab depressurization treatment
47 system, either ex-situ or in-situ, is required to be covered by or inte-
48 grated into the hardscape cover system.

49 (b) The thickness of a hardscape cover system that meets the remedial
50 action cover system requirements must:

51 (i) be at least one foot thick at sites where the hardscape cover
52 system is being constructed in native soil post remediation; or

53 (ii) two feet thick for sites where structurally unsound soil, such as
54 historic fill or sand, remains present post remediation; and

55 (iii) otherwise meet the requirements of the New York building and
56 construction codes in effect at the time of the remediation and the

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1 requirements of the New York state department of transportation standard
2 specifications, if applicable, and be certified by a licensed profes-
3 sional engineer.

4 § 6. The opening paragraph of subdivision 2 of section 27-1419 of the
5 environmental conservation law, as added by section 1 of part A of chap-
6 ter 1 of the laws of 2003, is amended to read as follows:

7 A final engineering report shall describe the final and completed
8 remedy that was implemented during the remedial action work necessary
9 for the site's qualification for the certificate of completion, which is
10 approved by the department in consultation with the department of health
11 with respect to public health impacts of the remedy and shall include,
12 at a minimum:

13 § 7. Paragraph 2 of subdivision (b) of section 21 of the tax law, as
14 amended by section 23 of part BB of chapter 56 of the laws of 2015, is
15 amended by to read as follows:

16 (2) (A) Site preparation costs. [~~The~~]

17 (i) With respect to qualified sites for which the department of envi-
18 ronmental conservation has issued a notice to the taxpayer on or after
19 July first, two thousand fifteen that its request for participation has
20 been accepted under subdivision six of section 27-1405 of the environ-
21 mental conservation law, the term "site preparation costs" shall mean
22 all amounts properly chargeable to a capital account, which are paid or
23 incurred and which are necessary to implement a site's investigation,
24 remediation, or qualification for a certificate of completion, and shall
25 include costs of: excavation; demolition; activities undertaken under
26 the oversight of the department of labor or in accordance with standards
27 established by the department of health to remediate and dispose of
28 regulated materials including asbestos, lead or polychlorinated biphe-
29 nyls; environmental consulting; engineering; legal costs; transporta-
30 tion, disposal, treatment or containment of contaminated soil; remedi-
31 ation measures taken to address contaminated soil vapor; remedial action
32 cover systems consistent with applicable regulations; physical support
33 of excavation; dewatering and other work to facilitate or enable remedi-
34 ation activities; sheeting, shoring, and other engineering controls
35 required to prevent off-site migration of contamination from the quali-
36 fied site or migrating onto the qualified site; and the costs of fenc-
37 ing, temporary electric wiring, scaffolding, and security facilities
38 until such time as the certificate of completion has been issued. Site
39 preparation shall include all costs paid or incurred within sixty months
40 after the last day of the tax year in which the certificate of
41 completion is issued that are necessary for compliance with the certif-
42 icate of completion or subsequent modifications thereof, or the remedial
43 program defined in such certificate of completion including but not
44 limited to institutional controls, engineering controls, an approved
45 site management plan, and an environmental easement with respect to the
46 qualified site. Site preparation cost shall not include the costs of
47 [~~foundation systems that exceed the cover system requirements in the~~
48 ~~regulations applicable to the qualified site~~] remedial action cover
49 systems pursuant to subdivision five-b of section 27-1415 of the envi-
50 ronmental conservation law.

51 (ii) With respect to qualified sites for which the department of envi-
52 ronmental conservation has issued a notice to the taxpayer before July
53 first, two thousand fifteen that its request for participation has been
54 accepted under subdivision six of section 27-1405 of the environmental
55 conservation law, "site preparation costs" shall mean all amounts prop-
56 erly chargeable to a capital account, (1) which are paid or incurred in

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1 connection with a site's qualification for a certificate of completion
2 and may include, but may not be limited to, costs for remediation meas-
3 ures taken to address contaminated soil vapor, remedial action cover
4 systems, and other engineering and institutional controls as described
5 in section 27-1415 of the environmental conservation law, and (2) all
6 other site preparation costs paid or incurred in connection with prepar-
7 ing a site for the erection of a building or a component of a building,
8 or otherwise to establish a site as usable for its industrial, commer-
9 cial (including the commercial development of residential housing),
10 recreational or conservation purposes. Site preparation costs shall
11 include, but not be limited to, the costs of excavation, temporary elec-
12 tric wiring, scaffolding, demolition costs, and the costs of fencing and
13 security facilities. Site preparation costs shall not include the cost
14 of acquiring the site.

15 (B) Site preparation costs which are properly includible in the cost
16 or other basis for federal income tax purposes of qualified tangible
17 property, as described in paragraph three of this subdivision, shall be
18 allowable for purposes of the calculation of the site preparation credit
19 component under paragraph two of subdivision (a) of this section, but
20 any such costs shall be excluded from such qualified tangible property
21 basis for purposes of calculating the tangible property credit component
22 under paragraph three of subdivision (a) of this section.

23 § 8. This act shall take effect immediately. Effective immediately,
24 the addition, amendment and/or repeal of any rule or regulation neces-
25 sary for the implementation of this act on its effective date are
26 authorized and directed to be made and completed on or before such
27 effective date.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A10954

SPONSOR: Schimminger

TITLE OF BILL:

An act to amend the environmental conservation law, in relation to the "Brownfield cleanup program" exceedances of the track 1 soil cleanup objectives, to clarifying the operative documents that describe the approved remedial action for a brownfield site, and to incorporating provisions related to soil vapor intrusion; and to amend the tax law, in relation to the brownfield redevelopment tax credit

PURPOSE OF THE BILL:

The bill clarifies certain Brownfield Cleanup Program (BCP) provisions currently being misconstrued by the Department of Environmental Conservation (DEC) due to vague language or lack of plain language clarity, clarifies the interaction between federal tax law and the brownfield redevelopment tax credit, and provides a means for determining credits when qualified tangible property is placed in service on, a qualified site by more than one taxpayer (as is common with affordable housing projects and larger BCP sites). The bill gives guidance to the Department of Taxation and Finance (DTF), which has misconstrued the intent of certain statutory provisions. These changes will promote predictability for program applicants, and would further advance the program's environmental cleanup and urban revitalization goals by incentivizing the remediation, strategic reuse and redevelopment of contaminated land throughout the State."

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of this bill amends ECL § 27-1411(2) by clarifying the documents that describe the approved remedial action for the site. DEC has been issuing "decision documents", which are not documents required by or described in the BCP Act. When DEC began issuing decision documents several years ago, BCP applicants thought these documents were simply summaries of the remedy to help the public understand the remedy since they were issued in a similar fashion to a fact sheet, and were not intended to include all remedial components approved by the DEC and the Department of Health (DOH) in the Remedial Action Work Plan (RAWP). However, DEC and DTF began using these documents as the only operative document to describe the components of the remedy, even if both NYSDEC and NYSDOH had approved a Remedial Action Work Plan (RAWP) which included different remedial action components. NYSDEC's and DTF's use of decision documents in this fashion changes the legislative intent of the BCP Act. The BCP Act was drafted to allow volunteers or participants to select their remedy subject to Departmental approvals when the site does not pose a significant threat. The remedy selection process was effec-

tively intended to be performed through the volunteer's/participant's submission of a RAWP, Department's approval of the RAWP, any amendments thereto, and finally the final engineering report (FER), which describes the remedy ultimately implemented (the RAWP remedy, plus any deviations from the RAWP). There is no issue with a decision document being used to summarize the remedy for purposes of public notice. However, this should not be the operative document only relied upon by DTF to describe the remedy. The final remedial action should be fully set forth in the FER. This amendment clarifies that the RAWP describes the final selected remedy and FER describes the final remedy implemented, and are thus the principal documents that create the record, which should be relied on by DTF to determine costs incurred to qualify a brownfield site for a certificate of completion. DOH also has assumed more of a role than intended, and has been delaying RAWP and FER approvals. This provision clarifies that DOH's review should be solely focused on public health impacts of the remedy, if any.

Section 2 of this bill includes a new brownfield cleanup agreement provision that cross-references the tax credit Sections 21 and 22 of the Tax Law such that once a party receives a Certificate of Completion they will be entitled to the applicable tax credit.

Section 3 of this bill updates the Track 1 cleanup definition in ECL § 27-1415(4) to address sites where contaminated soil vapor may still be present from an on-site residual or off-site groundwater or soil vapor source after implementation of a Track 1 soil remediation. The added language clarifies that a site that completes a Track 1 soil remediation does not lose its Track 1 status if it must implement groundwater and/or soil vapor institutional or engineering controls to maintain the Track 1 soil remediation as a result of the site being present in an area-wide contaminated groundwater and/or soil vapor plume. The Track 1 remediation that the volunteer or participant has conducted will likely be re-contaminated from no fault of theirs when a Site is in an area-wide groundwater or soil vapor plume area without institutional controls. The amendment clarifies that a site that achieves the Track 1 soil cleanup objectives can maintain the site's Track 1 status, provided the site records an environmental easement to ensure that the soil vapor and groundwater mitigation measures are maintained by the site's owner pursuant to a Site Management Plan to ensure the Track 1 soil standards continue to be met.

The legislature recognizes that there may be residual groundwater or soil vapor contamination even after a Track 1 soil cleanup is implemented, but still desires to encourage Track 1 cleanups regardless if there are engineering controls required to address residual groundwater or soil vapor contamination. Without these mitigation controls, Track 1 cleanups may not be achievable on most brownfield sites, since most brownfields are in areas near other brownfields, and therefore the requirement leads to a result that is counter to the overall statutory intent of encouraging the most permanent and protective remedies. This is also the case whether or not the party is a volunteer or participant. Participants are also encouraged to achieve Track 1. Therefore, the regulation that limits the five-year provision to only volunteers is counter to legislative intent and is hereby superseded.

Section 4 of this bill updates the Track 2 cleanup definition in ECL § 27-1415(4) to clarify the original legislative intent that Track 2 soil cleanup objectives must be met down to bedrock in order to achieve a Track 2 cleanup, and to address soil vapor that may still be present from an on-site source or an off-site source after implementation of a

Track 2 soil remediation. NYSDEC created a regulation at 6 NYCRR § 375-3.8(e)(2), which allowed a party to leave contamination above the Track 2 soil cleanup objectives below 15 feet, while still allowing the site to maintain Track 2 status. This regulation does not reflect the intent of the original statutory Track 2 definition, which as plainly drafted required all soil above bedrock to achieve the Track 2 contaminant-specific soil cleanup objectives as set forth in the Track 2 Tables at 6 NYCRR § 375-6.8(2). The statutory amendment effectively supersedes the regulation at 6 NYCRR § 3753.8(e)(2), which allowed a party to leave contamination below 15 feet above the Track 2 soil cleanup objectives, while maintaining Track 2 status; but this statutory amendment preserves the party's ability to use restrictions on the site to address any residual soil contamination remaining above the Track 1 SCOs, or groundwater or soil vapor contamination.

Section 5 of this bill would amend ECL § 27-1415 subpart 5 to include a new section 5-b defining when "remedial action cover systems" are required and the required thickness for such a cover system to be effective. This confirms that remedial action cover systems can consist of physical barriers made up of clean soil, asphalt or concrete exterior surfaces, and interior barriers like foundation slabs and sidewalls. The 2015 amendments to the Tax Law defining "site preparation costs" permit a portion of the cost of foundations and sidewalls that are part of a remedial action cover system to be counted as "site preparation costs." However, NYSDEC has been drafting decision documents, and revising work plans and engineering reports to exclude the cover system requirement, even though the presence of a remedial action cover system is part of the remedy in order to eliminate the costs of these systems counting toward the site preparation tax credit. This exclusion means that building foundations are not part of the remedy, and thus not subject to upkeep, maintenance, or inspection requirements, or to DEC oversight through an environmental easement or site management plan. This is not what the Legislature intended. Foundation slabs and sidewalls can and often are part of the remedy in a Track 4 remediation, and the bill recognizes this and clarifies what that means for tax credit purposes.

The bill first affirms that where a remedial action cover system is present in a Track 4 site and includes a foundation slab and/or sidewalls, the entire cover system is part of the remedy. The Tax Law then determines how much of the cost of that system can be counted as a "site preparation" cost. When read together, Tax Law Sections 21(b)(2) and 21(a)(3)(iv), as amended in April 2015, clearly intended to require taxpayers to divide the cost of remedial action cover systems consisting of building foundations into two parts: (1) a site preparation amount equal to the equivalent cost of a remedial action cover system for the area on the site that is covered by the foundation slab; and (2) a qualified tangible property amount equal to the balance - that is, the foundation cost that exceeds the equivalent remedial action cover system cost (i.e. the excess cost for very thick foundation slabs, etc.).

Due to the lack of clear statutory and regulatory direction, the NYSDEC has been providing unclear guidance to BCP parties on when cover systems are and are not required. This Section of the bill clarifies this and confirms that hardscape surfaces, including foundation slabs and sidewalls, may properly be part of the remedial cover system. The 2015 changes make it clear that for post-2015 sites, only a portion of foundation costs may be counted as site preparation costs. The bill does not change the calculation of site preparation costs for sites accepted prior to the July 2015 cutoff.

In addition, DTF has decided to completely disallow all foundation costs as site preparation costs even when the RAWP and FER include a constructed foundation as a required as part of the remedy at a brown-field site. DTF contends its position is justified due to conflicting provisions in the definition of site preparation costs. Accordingly, DTF has been allocating all of the foundation costs as tangible property costs, even when a portion of the foundation was clearly remedial under NYSDEC approved plans and documents. The effect is to eliminate valid site preparation costs from the site preparation tax credit calculations. The bill clarifies the legislature's intent of the April 2015 amendments by 1) defining when remedial cover system consisting of a foundation or hardscape surface such as asphalt is required as part of a remedial action; 2) specifying the minimal thickness needed for such cover systems to avoid cracking in the short term based on and in accordance with the minimal construction requirements in the existing Building Code of New York State, New York State Department of Transportation Standard Specifications, and based on practical remedial experience as explained by brownfield practitioners; and 3) requiring the foundation to be certified by a licensed Professional Engineer. Additional relevant technical amendments to the Tax Law are also summarized below to further effectuate these amendments.

Section 6 of this bill amends Tax Law § 21(b) to harmonize federal tax law with the definitions of "site preparation costs" and "qualified tangible property" used in calculating the brownfield redevelopment tax credit (BRTC).

This section of the bill clarifies that the cost of remediation and site preparation as defined in the law can include costs that are also included in the depreciable basis of project assets (such as a building) used for federal income tax purposes, while preserving and clarifying the no double dipping rule to ensure that federal depreciable basis is reduced - for BCP credit purposes - by allowed site preparation costs when calculating the tangible property credit component.

Sections 7 and 8 of the bill harmonize the definitions of "site preparation costs" with section 6 of the bill and also incorporate into the definitions the remedial elements described in the environmental conservation law (including the amendments under sections three through five of this bill. Section 7 addresses sites accepted into the BCP before July 1, 2015 (so-called "generation 2" sites), while section 8 addresses sites accepted on or after July 1, 2015 (so-called "generation 3" sites).

Section 7 of this bill amends the pre-April 2015 Tax Law § 21(b)(2) (which became effective June 28, 2015) by deleting the contradictory provision which appears to exclude from site preparation costs, costs that qualify for the basis for federal income tax purposes of qualified tangible property, even if such cost was otherwise a site preparation cost since it was part of the remedial action. This change is applicable to brownfield sites for which the Department of Environmental Conservation has issued a notice of acceptance on or prior to June 28, 2015. This change is not required for sites that entered the program after June 28, 2015 law because this language was excluded in the current law.

JUSTIFICATION:

As of the current date, DEC has issued over 300 Certificates of Completion (COCs) for Brownfield Cleanup Program sites since the program

was established in 2003. New York's Brownfield Cleanup Program has been responsible for the remediation and redevelopment of contaminated sites in an average of 3.2 years. In the Superfund program, the average time-frame for remediation is 10 to 20 years, and the sites rarely, if ever, are redeveloped because the final cleanups are not safe enough for site reuse as the sites are typically permitted to remain industrial. Due to the tax incentives in this program, superior cleanups have been achieved enabling not only one brownfield site, but multiple brownfields in brownfield infested neighborhoods to be redeveloped. This is allowing for residential and commercial development on sites that are no longer suitable for industrial reuse. In addition, all of the project sites that have been remediated and redeveloped, have not only create tax revenue generating buildings and permanent jobs on sites that formerly sat fallow, these projects have enhanced investment opportunities on neighboring sites, which has improved property values in numerous communities throughout the State. The legislature did not intend some of the new policy directions the executive branch has been taking the program since the 2015, which appear to have been based on statutory provision either misinterpreted or not clearly drafted. These technical amendments are necessary to stabilize this highly successful remediation and economic development program.

Nevertheless, the law has significant fiscal implications. However, studies have shown that revenues exceed the tax credit expenditures over the long term and are transforming neighborhoods. Since developers do not clearly know what benefit they are or are not eligible for given the executive branches recent policy directions, changes proposed in this bill are designed to clarify the benefits and limitations on those benefits. For example, before this bill, a developer could try to include a 5-6 foot thick foundation as a site preparation cost. This will no longer be permitted. However, one or two feet of the foundation cost will clearly be covered if the foundation is a necessary part of the remedy due to soil vapor issues, for example. Such clarity is needed by both developers and the regulators to better understand the intent of the legislature.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

Minimal.

EFFECTIVE DATE:

This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.